

LABOUR DEPARTMENT

The 19th September 1994

No. 14/13/87-6 Lab./192. —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of Secretary, H.S.E.B., Panchkula *versus* Shri Dayal Chand.

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 259 of 1992

between

SHRI DAYAL CHAND C/O BHARTIYA MAZDOOR SANGH, PANIPAT WORKMAN

and

THE MANAGEMENT OF SECRETARY, H.S.E.B., CHANDIGARH,
(2) THE EXECUTIVE ENGINEER (S. I.) CONSTRUCTION
DIVISION, H.S.E.B., KARNAL.

Present :

Shri Karan Singh, A. R. for the workman.

Shri S. S. Sirohi, A. R. for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above to this Court for adjudication.—vide Labour Department Notification No. 3/25/90-Lab., dated 29th October, 1991 :—

Whether the termination of services of Shri Dayal Chand is justified and in order ? If not, to relief he is entitled ?

2. Both the workman and the management were summoned. The workman filed the demand notice that he worked in the office of Executive Engineer, Construction Division, H.S.E.B., Karnal with effect from 5th January, 1981 to 31st August, 1983 but the Executive Engineer issued notice regarding termination of his services on 11th July, 1983. The other workers are still working and should have been taken on the job and the department has not given the Bonus and service compensation (by the Executive Engineer) and the respondent started taking work from new workers and from the contractors and hence he be reinstated with continuity of service and full back wages.

3. The respondent has filled the written reply that the reference is bad in law ; the reference is bad on account of delay and laches ; the applicant was appointed on daily wages as labourer in January, 1981 and he was paid according to the number of days he worked in a month. Petitioner was given one months notice and he was asked to collect the retrenchment compensation but the petitioner did not collect the same to the reasons best known to him ; no junior person to him has been taken in the Board's service after the services of the petitioner were terminated and provisions of Section 25-F has been followed before terminating the service of the workman and therefore, the claim petition be dismissed with costs.

4. The replication was filed. On the pleadings of the parties, the following issues were framed :—

1. Whether the impugned termination of services of the workman is in valid ?
2. Whether the reference is bad due to laches ?
3. Relief ?

5. My findings on the above issues with reasons thereof are as under :—

Issues No. 1 and 2 :

6. Both these issues are decided together because the question involved in both the issues is same.

7. The workman has come into witness box as WW-1 and closed the evidence. The management has examined Shri Rameshwar Dass Gupta as MW-1 and closed the evidence.

8. It is proved that the workman had worked for about 735 days and he has worked for more than 240 days in the year. The question arise for determination by me is whether any retrenchment compensation was paid to the workman or not before retrenching him. The workman has made statement that he had worked for 735 days. The workman has made statement that he was posted with effect from 1st October, 1981. Ex. W-1 is certificate of service showing that he had served for more than 240 days in a year, Ex. W-2 is the order given by the Executive Engineer, S.I. Construction, H.S.E.B., Karnal to the applicant retrenching him w.e.f. 31st August, 1993. As such it is proved that the workman had served the department for more than 240 days in a year and his services were retrenched. Ex. W 3 is the photostat copy of Award given by Shri S. B. Ahuja, Presiding Officer, Industrial Tribunal, Haryana, Faridabad which is placed on the file. Ex. A-2 is the order passed by the Hon'ble High Court in Civil Writ Petition filed by Jasbir Singh against the H.S.E.B. etc. and admitting their case. The workman is not one of the writ petitioner but the principle laid down in the copy of order Ex. A-2 is fully applicable to the workman also.

9. The contention made by the learned A.R. for the workman is that as laid down in Section 25-F of the I. D. Act and which is that where any workman are retrenched, and the employer proposes to take into his employment any persons, he shall, in such manner as may be prescribed, give an opportunity in to the retrenched workman who are citizen of India to offer themselves for re-employment and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons. Section 25-N of the I.D. Act is that (1) No workman employed in any industrial establishment to which this chapter applies, who has been in continuous service for not less than one year employee shall not be retrenched by that employer until—(a) the workman has been given three month's notice (b) the prior permission of the appropriate Government by notification in the official gazette (hereinafter in this Section referred to as the specified authority) has been obtained on an application made in this behalf. (2) XX XX XX XX XX (3) Where an application for permission under sub-section (1) has been made, the appropriate Government on the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workman concerned and the person interested in such retrenchment, may, having regard to the genuiness and adequacy of the reasons stated by the employer, the interest of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

10. I have gone through all the sections 25-H & N to the present dispute section 25-H is fully applicable which required that the employer and the other workers after the retrenchment of the workmen, the workman is entitle to be heard and if the management find him fit for the job, the management is bound to employ him.

11. It is proved that the workman had worked for more than 240 days in a year and he had been retrenched and the retrenchment if not found to be in accordance with law he is liable to be reinstated and for this reference reliance is made to Chandrama Singh *versus* Managing Director, U.P. Co-op., Union, Lucknow and others cited in 1992 LLR 137 holding that where a complete machinery/remedy for obtaining relief is provided in statute and such machinery and remedy fully covers the grievence of the petitioner then, unless extraordinary or exceptional circumstances exists or the machinery/remedy does not cover the grievence of the petitioner to be in adequate or in ineffacious, the petitioner has to be relegated to the alternative remedy and the Court should not entertain a writ petition under Article 226 of the Constitution of India for redressal of the grievence of the petitioner.

12. The question arises for determination is whether the workman has served for more than 240 days in a year or not. The workman has made statement that he had served and was appointed in the year 1980 and he was removed from the job by the middle of 1983 and thus it is proved that the workman has worked for more than 240 days in a year in the department. The contention made by the learned A.R. for the respondent/management is that the department had paid one month pay to the workman but no notice or retrenchment compensation etc. have been paid to comply with the mandate of Section 25 of the I.D. Act and the mandate is not complied with and the termination of workman can be held to be illegal and can not stand.

13. The next contention of the learned A.R. for the workman is that to closure of the company is required under section 25-O of the I.D. Act, and information of closure is to be sent to the Govt., but it is proved that no intimation was sent to the Govt. and hence closure at all can not be considered legal. I have gone through the statement of MW-2 I do not find that if information was sent to the Govt. for closure of the unit and hence I am of the view that the section 25-O is fully applicable and have not been complied with.

13. Now the question arises whether any other workman was appointed after the retrenchment of the workman in question or not. The workman has made statement that Jashwant Singh Xen had appointed some other person after his removal on the job but he could not tell any name of person. MW-1 Rameshwar Dass Gupta made the statement that no new person was appointed after termination of services of the workman. It is true that Rameshwar Dass Gupta has not been suggested but it is also proved that Hon'ble High Court had ordered for the appointment of seven persons and as ordered by my learned predecessor in the Award which was published in the official gazette. The learned L.O. for the management submitted that who so ever was ordered by the High Court has been appointed. When the management is appointing other person I am not going to believe the plea that no other person was appointed after the workman was retrenched. When the workman is proved to have worked for more than 240 days in his service and services has not been terminated in accordance with the Section 25-F of the I.D. Act, the termination can be said to be illegal and for which reason I do not agree with the submission that the termination of service was made in the legal manner. (The learned A.R. for the workman has referred Ex. W W-2/1 showing that 37 were ordered to be reinstated by the Hon'ble High Court and Mr. S. B. Ahuja, the learned Presiding Officer has reinstated the 7 persons. Keeping in view all the circumstances the workman is entitled to be reinstated and I decide the Issue No. 1 in favour of the workman and Issue No. 2 against the management.

Issue No. 3 (Relief) :

14. In view of my findings on the above issues I hold that the workman is entitled to be reinstated with continuity of service and 50% back wages. The reference is answered and returned accordingly, with no orders as to costs.

The 31st March, 1994.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. 1038, dated the 18th April, 1994.

A copy is forwarded to the following :—

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer Karnal.

P. L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

The 21st September, 1994

No. 14/13/87-6Lab./228.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s M.D., HSDIC, Chandigarh *versus* Sh. Shri Abhay Singh Yadav.

IN THE COURT OF MRS. NIRMAL YADAV, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 35 of 1988

between

SHRI ABHAY SINGH YADAV, S/O SHRI RAM CHANDER, C/O SHRI S.K. YADAV, HOUSE NO. 859, SECTOR 4, GURGAON

and

THE MANAGEMENT OF (1) MANAGING DIRECTOR, HARYANA SEEDS DEVELOPMENT CORPORATION LTD., S.C.O. 169-70, SECTOR 8/C, MADHYA MARG, CHANDIGARH,
(2) MANAGER, HARYANA SEEDS DEVELOPMENT CORPORATION LTD, HAILY MANDI (PATAUDI), DISTT. GURGAON.

Present :

Shri S. K. Yadav for the workman.

Shri D.S. Tewatia for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court, for adjudication,—*vide* Haryana Government Labour Department Endst. No. 13464—70, dated 4th April, 1988:—

Whether retrenchment of Shri Abhay Singh Yadav, Chowkidar, is legal and justified? If not, to what relief is he entitled?

2. The facts according to petitioner's claim statement are that he was appointed as Chowkidar,—*vide* appointment letter dated 28th August, 1984 at the salary of Rs. 710 p.m. However, he joined his duties on 5th September, 1984 at Haily Mandi. Management illegally terminated petitioner's service,—*vide* letter dated 18th January, 1988 without assigning any reason. According to petitioner, management did not give any notice nor retrenchment compensation was paid to him at the time of retrenchment. It is further stated that management had sent a cheque dated 21st March, 1988, which was received by the petitioner under protest.

3. Claim of the petitioner is controverted by the management stating that petitioner's services were retrenched on account of closure of the units of the respondent management. Management had retrenched his service in accordance with the legal provisions of law. He was paid retrenchment compensation, therefore he is not entitled to any relief.

4. In view of the pleadings of the parties, following issue was framed on 28th October, 1988:—

Whether retrenchment of Shri Abhay Singh Yadav, Chowkidar is legal and justified? If not, to what relief is he entitled?

5. I have heard learned authorised representatives of the parties. My findings on the issue framed are as under :—

6. In order to prove their case, management produced Shri R.B. Sharma, Manager, who stated that petitioner was appointed as Chowkidar on 28th August, 1984,—*vide* appointment letter Ex. M1 and was posted at Haily Mandi, Pataudi. He further stated that on account of closure of unit at Tohana 21 employees had become surplus, therefore, their services were dispensed with,—*vide* order Ex. M2. He further stated that services were terminated according to the seniority list Ex. M3. He further stated that petitioner was given retrenchment compensation amounting to Rs. 1,031-55,—*vide* cheque dated 18th March, 1988. He further stated that Chanchal Kumar one of the retrenched employees had filed a writ petition in the Hon'ble High Court, which was dismissed,—*vide* order Ex. M4. When cross examined, witness admitted that petitioner was relieved,—*vide* letter dated 18th January, 1988. He denied having any knowledge of any seniority list was displayed or was sent to the petitioner before retrenchment of his service. According to the witness about 400 or 500 employees are working all over Haryana with the respondent-management. He also denied having any knowledge if permission was taken from the Government before retrenchment of the employees. Witness admitted that petitioner had continuously worked with respondent with effect from 5th September, 1984 to 18th January, 1988.

7. On the other hand, workman appeared as WW1 and reiterated his claim. He produced retrenchment order Ex. W1 and categorically stated that no notice or pay in lieu thereof was given to him, nor retrenchment compensation was paid at the time of retrenchment of his service. He further stated that cheque regarding retrenchment compensation was received after filing of demand notice. Petitioner categorically stated that management had not displayed any seniority list before retrenchment of his service. He further stated that S/Shri Bhoop Singh, Banwari Lal, Raghubir Singh and Data Ram persons junior to him are still working with the respondent. According to him, he did not file any writ petition before the Hon'ble High Court regarding retrenchment of his service. He denied the suggestion that retrenchment compensation was offered to him 2-3 days after retrenchment of his service. He denied the suggestion that copy of seniority list Ex. M3 was given to him.

8. Learned A.R. of the workman argued that respondent management had failed to comply with the mandatory provisions of Section 25 of the I. D. Act, in as much as retrenchment compensation was not paid to him at the time of retrenchment, nor any notice was given to the petitioner. Learned A.R. further argued that no prior permission of the appropriate Government was obtained by the management before retrenchment of petitioner's service. Learned A.R. of the workman argued that it is admitted by MW-1 Shri R.B. Sharma that there were more than 400 or 500 employees with the respondent, therefore, provisions of Section 25N were complied with at the time of retrenchment of petitioner's service. Learned A.R. further argued that no seniority list as contemplated under Rule 76 of the Industrial Disputes (Punjab) Rules 1958, was displayed on the notice board. In support of his argument learned A.R. referred to judgment of Hon'ble High Court 1992 II S L R page 253 *Lakshmi Pandit versus Presiding Officer, Industrial Tribunal and ors*, 1991 (4) SLR page 11 *Gulzar Singh versus Presiding Officer, Labour Court and another*. On the other hand learned A.R. of the management argued that petitioner's service were retrenched as no longer required on account of closure of Tohana Unit. Petitioner was junior most employee, therefore, his service were retrenched.

9. In this case, it is admitted case that management has more than 400-500 employees, therefore, provision of chapter V-E would be applicable. Section 25N of the I. D. Act reads as under :—

(1) No workman employed in any industrial establishment to which this chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,

(a) the workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this Section referred to as the specified authority) has been obtained on an application made in this behalf.

10. Sub-section 7 of Section 25N provides that where no application for permission under Sub-section (1) is made, such retrenchment shall be deemed to be illegal from the date on which, notice of retrenchment was given to the workman and workman shall be entitled to all the benefits under any law for the time being as if no notice has been given to him. MW1 Shri R.B. Sharma admitted that petitioner was not paid or offered retrenchment compensation nor he was given pay in lieu of notice at the time of retrenchment. A sum of Rs. 1031-55 was given to him,—vide cheque dated 18th March, 1988 whereas petitioner was retrenched on 18th January, 1988, as such the retrenchment compensation was not paid simultaneously with the retrenchment of his service. He also admitted that there were more than 400-500 employees with the respondent department and the employees are transferable from one place to another. He denied having any knowledge if seniority list was displayed at the place of petitioner's posting before his termination. He also denied having any knowledge whether any permission was taken from the State Government regarding retrenchment of petitioner's service. Copy of the writ petition Ex. M 8 filed by Chanchal Kumar does not help the respondent in any manner as petitioner was not a party to the same and it is not binding on him. From the above mentioned facts, it is apparent that management did not make any offer of payment of retrenchment compensation, nor he was given any notice or pay in lieu thereof as provided under Section 25N of the I. D. Act. It is established principle of law that compliance of provisions of Section 25F in case of a management having less than 100 employees and the provisions of Section 25N in case of management having more than 100 employees is mandatory at the time of retrenchment of service of a workman. Admittedly, management has not complied with the mandatory provisions of Section 25N. Even provisions of Rule 76 which requires that employer shall prepare a seniority list of all the workmen and cause a copy thereof to be pasted on the notice board have not been complied. A specific suggestion was given to MW1 Shri R. B. Sharma if any seniority list was displayed before retrenchment of petitioner's service, but he denied having any knowledge of seniority list having been displayed. There is nothing on record to prove that seniority list Ex.M3 was displayed on the notice board or it was sent to the petitioner before retrenchment of his service. In view of the above discussion, I am of the view that the order of retrenchment of the petitioner is in violation of the provisions of the I. D. Act, 1947 and Rules, therefore, the same is set aside. Petitioner Abhay Singh Yadav is entitled to reinstatement with continuity of service and full back wages. Reference is answered and returned accordingly with no order as to cost.

NIRMAL YADAV,

Dated : 2nd May, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endst No. 775-76, dated the 31st May, 1994.

A copy is forwarded to :—

1. The Labour Commissioner, Haryana, Chandigarh.
2. The Labour Officer, Gurgaon.

NIRMAL YADAV,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.